

SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 Las Vegas, Nevada 89146-5308  
 Tel: (702) 228-7590 · Fax: (702) 892-0122

Annette W. Jarvis, Utah Bar No. 1649  
 Steven C. Strong, Utah Bar No. 6340  
 RAY QUINNEY & NEBEKER P.C.  
 36 South State Street, Suite 1400  
 P.O. Box 45385  
 Salt Lake City, Utah 84145-0385  
 Telephone: (801) 532-1500  
 Facsimile: (801) 532-7543  
 Email: [ajarvis@rqn.com](mailto:ajarvis@rqn.com)

**E-FILED ON MAY 24, 2007**

Lenard E. Schwartzer, Nevada Bar No. 0399  
 Jeanette E. McPherson, Nevada Bar No. 5423  
 SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 Las Vegas, Nevada 89146-5308  
 Telephone: (702) 228-7590  
 Facsimile: (702) 892-0122  
 E-Mail: [bkfilings@s-mlaw.com](mailto:bkfilings@s-mlaw.com)

Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

**REPLY IN SUPPORT OF THE  
 OBJECTION OF USA  
 COMMERCIAL MORTGAGE  
 COMPANY TO THE  
 ADMINISTRATIVE EXPENSE  
 CLAIM OF SIERRA LIQUIDITY  
 FUND, LLC**

In re:  
 USA SECURITIES, LLC,  
 Debtor.

**(Affects USA Commercial Mortgage  
 Company)**

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC

Hearing Date: May 31, 2007  
 Hearing Time: 9:30 a.m.

1 USA Commercial Mortgage Company (“USACM”), by and through its counsel, hereby  
 2 files its Reply in Support of its Objection to the Administrative Expense Claim of Sierra Liquidity  
 3 Fund, LLC (“Reply”) and moves this Court, pursuant to section 502 of title 11 of the United States  
 4 Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the  
 5 “Bankruptcy Rules”), for an order granting the relief sought by this Objection. For the reasons  
 6 discussed below and in the Objection, Sierra’s response filed on May 18, 2007 (the “Response”),  
 7 is not well-founded and USACM requests that Sierra’s Claim be disallowed in its entirety.

### 8 ARGUMENT

#### 9 **A. The Plan Clearly States that Direct Lenders Released their Claims Against** 10 **USACM**

11 The Plan clearly and explicitly states in Article VIII, Section A(4) (page 76) that Direct  
 12 Lenders agreed to a compromise in which they released, with a few exceptions not applicable  
 13 here, all claims against USACM. This release and compromise was not “buried” in the Plan as  
 14 Sierra asserts, and any such allegation is disingenuous particularly considering that Sierra is a  
 15 sophisticated party that knowingly evaluated and purchased Direct Lender interests (likely at a  
 16 significant discount) and that has been represented by counsel at all times in this case.  
 17 Furthermore, the Confirmation Order that this Court entered specifically referred to this provision  
 18 of the Plan stating that “[a]s set forth in Article VIII, Section A. of the Plan, the limitation of  
 19 liability and release provisions shall be effective and binding upon all applicable Persons and  
 20 entities to the fullest extent provided in the Plan.” Sierra, as were all creditors, was obligated to  
 21 read all of the Plan and is bound by its provisions. The Plan is clear that claims such as Sierra’s  
 22 have been released and extinguished and Sierra has no grounds for complaint.

#### 23 **2. Any Issues Sierra May Have with the Plan or Confirmation Order Have Long** 24 **Since Been Released**

25 On page 9 of its Response, Sierra obliquely asserts that Class A-5 may not have “even  
 26 voted on the same plan that was ultimately confirmed.” In addition to the fact that such an  
 27 unsupported statement is patently untrue, any issues relating to confirmation of the Plan have long  
 28 since been released by Sierra. If Sierra had a problem with the Plan or the Confirmation Order

1 that was entered it was required to appeal the Confirmation Order or at the very least object to the  
2 form of the same. It did neither and, therefore, has no basis to complain about any perceived  
3 issues.

4 **3. USACM Does Not Speak for Compass and Cannot be Held Hostage By Sierra**  
5 **Because of its Perceived Issues with How Compass May Service the Loans**

6 Much of the Claim appears to be dependant on what Compass, as the asset purchaser, may  
7 or may not do in the future. USACM does not speak for Compass and cannot be held hostage by  
8 Sierra for any actions that Compass may or may not do at some future time. In paragraph II.C (on  
9 page 7 of its Response), Sierra acknowledges that it purchased its interest in loans with knowledge  
10 that the loans were non-performing and that the servicing rights were to be transferred under a  
11 plan of reorganization. It appears to be seeking administrative priority damages from the  
12 bankruptcy estate for the effect of Compass' interpretation of rights under the loan servicing  
13 agreements. Compass' future actions cannot be the basis for an administrative claim against  
14 USACM.

15 **4. Sierra has Presented Nothing to Show that USACM did not Appropriately**  
16 **Exercise its Business Judgment**

17 Sierra has presented nothing of substance to show that USACM did not act appropriately  
18 in exercising its business judgment in pursuing negotiations rather than foreclosure on certain  
19 properties. Sierra illogically asserts that USACM did not act in good faith because the automatic  
20 stay was in effect, the Court ruled the Loan Servicing Agreements were not executory contracts,  
21 USACM should have foreclosed on the properties, and USACM has breached its fiduciary duty to  
22 Sierra. These allegations are simply without merit. The fact that the Bankruptcy Code provides  
23 for an automatic stay or that the Court has made certain rulings during this case cannot be said to  
24 demonstrate any sort of "bad faith" on the part of USACM, and it is patently absurd for Sierra to  
25 make such an allegation. Furthermore, and as explained in the Objection, USACM had valid  
26 business reasons for pursuing negotiations on loans. Finally, and as explained in the Objection,  
27 USACM simply does not owe a fiduciary duty to Sierra. At most, it has a contractual duty to  
28 Sierra on account of the Loan Servicing Agreements. USACM appropriately exercised its

1 business judgment and Sierra's assertions to the contrary have no merit.

2 **5. Sierra Admits it has No Evidence to Support its Repeated Claims that it has**  
3 **Suffered any Damages.**

4 Sierra admits that it has no admissible evidence to support its repeated assertions that it has  
5 suffered huge damages on the loans in which it has purchased interests. USACM refers the Court  
6 to its Objection for further discussion on this issue.

7 **CONCLUSION**

8 For the reasons discussed above and in its Objection, USACM objects to the administrative  
9 expense claim filed by Sierra and requests that the Court disallow this claim in its entirety.  
10 USACM also requests such other and further relief as is just and proper.

11 Dated: May 24, 2007

12 /s/ Lenard E. Schwartz

13 Lenard E. Schwartz, Nevada Bar No. 0399

14 Jeanette E. McPherson, Nevada Bar No. 5423

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25 *Attorneys for Debtors*

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